

E

664

.H35W3

FRANCIS KERNAN, LL.D.

Regent

OF THE

University of the State of New York

A MEMORIAL ADDRESS

HON. WILLIAM H. WATSON





Class E60+ —

Book .K35 .V3





University of the State of New York

---

## Address

IN MEMORY OF

Hon. FRANCIS KERNAN, LL.D.

1816-1892

Delivered by Regent William H. Watson

AT THE ANNUAL MEETING OF THE

REGENTS OF THE UNIVERSITY, SENATE CHAMBER, 14 DECEMBER 1892

ALBANY  
UNIVERSITY OF THE STATE OF NEW YORK  
1893

E 664  
135143

*FRANCIS KERNAN*

*Born 14 January 1816*

*Died 8 September 1892*

*Elected Regent of the University, 10 February 1870*

*Elected United States Senator, 21 January 1875*

24 3 6 1  
20 24

## FRANCIS KERNAN

Within a very short period this board has been called to mourn the death of two of its most respected and illustrious members.

The portals of the grave had scarcely closed upon one of the most eminent literary men of our age—the lamented and gifted chancellor of the University—ere they again opened to receive another of our associates, distinguished alike in the forum and at the bar, a leader in one of the great political parties of our country, beloved wherever he was known, a man of national reputation, both as a statesman and a lawyer, who had filled with preeminent ability the most elevated positions in professional and civic life.

Francis Kernan, a name known throughout the length and breadth of our country, after 52 years' service at the bar, in the early autumn of the year, as of his life, passed to his eternal rest. The white snows of winter, not more pure than his character and fame, now cover his mortal remains, but to his colleagues in this board, his memory has the fresh verdure of perennial spring.

Regent Kernan was the eldest son of General William Kernan, who emigrated to this country from Ireland about 1803. His companion on the voyage to the New World was the father of Charles O'Connor. William Kernan landed in New York where he remained about two years and then removed to Steuben county in this state, to that part of it now included in Schuyler county, and purchased a tract of wild land in the present town of Tyrone. He soon afterward married Rose Stubbs, also a native of Ireland, who came to this country with her parents in 1808 and settled near the location of General Kernan's farm.

There, amid the picturesque, rural scenery of western New York, so wonderfully diversified by wild mountain, placid lake and deep resounding glen, Francis Kernan first drew the breath of life on January 14, 1816, and there imbibed that freedom of thought, that dignity of character and intellectual health which left so indelible a mark upon his public career in after life. A son of one of its honored pioneers he early learned those habits of self-denial and honest labor, which, while they invigorate the body, quicken the faculties of the mind and build up manly character.

Young Kernan remained at home until his 17th year and attended the neighboring district school whenever he could be spared from the duties of the farm. In 1833 he went to Georgetown college, in the District of Columbia, an excellent educational institution, for which he ever after retained the warmest affection. That he was an earnest and faithful student during his collegiate course, the speaker possesses most convincing proof, in the readiness, aptness, and felicity with which he has often heard him quote from both Virgil and Horace.

To Regent Kernan himself, as we shall hereafter see, may be fitly applied those beautiful lines from his favorite poet, in which, so forcibly inculcating the dignity of virtue and describing the only enduring civil merit, he utters the lofty sentiment that through all the ages has been and must forever be true, that the man of real worth is independent of popular favor, and that his happiness does not rest upon the capricious breath of popular applause,

"Virtus, repulsæ nescia sordidæ,  
Intaminatis fulget honoribus,  
Nec sumit aut ponit secures  
Arbitrio popularis auræ."

In the fall of 1836, Mr Kernan commenced the study of his profession in the office of his brother-in-law, Edward Quin, in Watkins, at the head of Seneca lake.

In 1839 he came to Utica and finished his legal studies in the office of Hon. Joshua A. Spencer and was admitted to



practice in July, 1840. Mr Kernan was ambitious and desirous of trying his fortune in a wider field. After his admission to the bar he asked Mr Spencer for a letter of recommendation, saying that he proposed to go to some western state to locate. "Don't go west. Stay in Utica and be my partner," was the prompt response of his preceptor. Mr Kernan accepted the proposition and remained the partner of this distinguished advocate until 1853, and then took his brother-in-law, George E. Quin, into partnership. In 1857 William Kernan was admitted to partnership and the firm became Kernan, Quin and Kernan. Mr Quin died in 1863. The firm afterward became William and Nicholas E. Kernan. John D. Kernan was a member of the firm until he was appointed railroad commissioner on the organization of the board of state railroad commissioners.

Mr Kernan was appointed reporter of the court of appeals in 1854 and served until 1857. He was again tendered the position, but declined on account of the pressure of other professional duties. He received this appointment from Gov. Seymour, and during his term of service reported four volumes of the proceedings of the court.

In the fall of 1860, he was nominated to the state assembly by the democrats and elected from a district which had given a large republican majority the preceding year.

In the assembly he at once took high rank as a legislator. He threw himself into the ranks of the defenders of the Union and of the active prosecution of the war, by supporting the war measures of Gov. Morgan, and was appointed by the governor a member of the committee for raising volunteers in the Oneida congressional district. His duties required his active services, which he generously gave. His speeches during this period were extremely loyal and patriotic. In a word, he was a "war democrat."

In 1862 Mr Kernan was elected to congress. He here rendered important service as a member of the judiciary committee, and was also thoroughly in accord with the

national government in its efforts to maintain the integrity of the Union. His course was marked by so decided a spirit of justice and moderation that he was often consulted by President Lincoln on matters pertaining to the conduct of the war.

In a debate on the 13th of January, 1863, on the subject of confiscation he used the following language, which shows his attitude on this very important matter: "I submit that the punishment for treason, like the punishment for every other crime should fall upon the guilty party only, and that we should not seek to affect his innocent children and heirs. Take away from the guilty party his life estate, his right to dispose of it, but do not take away the right of inheritance from the innocent heirs, who will show themselves loyal, else they never will have the right to come into court and ask to be heard." This measure was passed in the house but killed in the senate as being unconstitutional. He was instrumental in having the per capita tax on emigrants declared unconstitutional, and killed the bill which proposed to restore the head money paid to ship-owners. He was a member of the house of representatives from March 4, 1863, to March 4, 1865.

He was a prominent member of the state constitutional convention, held in 1867-68. Here his legal abilities were displayed to advantage in the framing of many of the most important provisions of the new instrument, which will forever remain as monumental evidence of his thoughtful ability.

As a member of the constitutional convention in 1867, Mr Kernan made an able, earnest, elaborate and most emphatic speech, advocating an absolute prohibition of sectarian appropriations of the public money. It was in part as follows:

*"Sir, the provision under consideration, reported by the committee on finance, by which it is provided that the legislature shall not donate any moneys or property of the state to any person, association or corporation, is correct and just.*

According to the theory of our government, all sects and denominations of religion are to have equal rights, and there is to be no discrimination in favor of or against any. The members of one denomination are not to be taxed to support the religious, charitable or educational institutions of the other. This is as it should be. The provision reported by the committee on finance is based upon this principle, and will carry it into effect. *It cuts all those institutions off from the public treasury; it places them, as they should be, on an equal footing; it leaves them to be supported and sustained by the charitable contributions of the individuals and religious denominations which organize and control them. This is in accordance with the principles of our government, it is just to all.* It will prevent jealousy and sectarian bitterness, which are ever to be deplored, from springing up between the members of the different religious denominations on account of real or fancied inequality in the appropriations made to charitable institutions."

Later he was appointed by Gov. Hoffman to prepare amendments to the constitution to submit to the people for adoption. The report of the convention was presented to the legislature, and most of the amendments proposed were submitted to the people and ratified. One which Mr Kernan regarded as the most important was not, however, submitted to the people by the legislature. It related to the governing of cities, and was the result of much study and deliberation. It provided that in cities having a population of 20,000 and upwards, the tax payers and only the tax payers were to vote for a board of audit. The city could contract no debt without the approval of its board of audit, and no bills could be paid without its sanction. The board was to have no power to order work or expenditures itself, but was simply to approve or disapprove the action of those already in office. Without its approval no ordinance or resolution went into effect and no bill could be paid. The board was to have no patronage and no pay. One member was to be

elected and one to retire each year and the term of office was to be three years.

February 10, 1870, Mr Kernan was chosen a member of the board of regents. Of his faithful and efficient services here it is unnecessary for me to speak. They are known to all his colleagues. He attended its meetings with the greatest regularity as long as his health allowed and rendered cheerful and valuable services upon the most important committees.

In the convention of 1871 Mr Kernan took a prominent part in excluding from the convention those democrats who were tainted by suspicion or apologizing for the corrupt. He stood manfully for party purity and reform.

Democracy was with him synonymous with devotion to his country, and those who assumed the garb of democracy to carry out selfish and wrongful schemes, encountered his courageous and persistent opposition.

He gave the first enthusiastic and cordial support which Samuel J. Tilden received, to the movement in the democratic party against the Tweed ring, and was recognized as Tilden's ablest ally. Mr Tilden has given most emphatic testimony to Mr Kernan's efficient services in destroying the Tweed ring. Mr Tilden once said: "The discovery of frauds by certain city officials happened just as I was about to leave the city to spend a week in the country. On the eve of my departure I had the opportunity of cross-examining a gentleman who had the confidence of the financial men and the tax payers of this city, and who called on me with a letter from a distinguished philanthropist (Peter Cooper). I became satisfied that the revelations were substantially true. My week's reflections in the country resulted in a determination to attempt to carry out that system of measures in which I have ever since been engaged. But some cooperation was indispensable. *The first man I sought was Francis Kernan.* After much telegraphing I found him attending court in Albany. I went there to

meet him. It was the 4th day of August, 1871. He was about to leave for the seashore to attend a sick relative. I gave him the documents. I submitted to him my views as to what ought to be done, and arranged for a further conference. On that occasion he gave me assurances of his full and cordial cooperation, which I ever afterward received. *He was to me the one necessary man for a contest in the state convention.* His courage, his independence, his tact and eloquence in debate, his popularity and the weight of his character were all I needed. I next sought Charles O'Connor."

It is evident that without Mr Kernan's assistance, Mr Tilden could not have made the movement a success.

His position in 1871 made him the logical candidate for governor in 1872. In the following year, therefore, he was nominated for governor of the state of New York by the democrats and liberals at Syracuse. It was a disastrous year for the democrats. Horace Greeley was the candidate for the presidency and a large portion of the democratic party could not bring itself to vote for him. The state gave a republican majority of over 53,000, but the vote of Dix over Kernan was less than that of Grant over Greeley.

In 1875 the democrats had gained control of the legislature. A senator was to be chosen to succeed Reuben E. Fenton. Horatio Seymour and Francis Kernan were the most distinguished men of that party. Seymour declined to be considered a candidate and said that he thought the honor belonged to Francis Kernan. That was the practically unanimous sentiment of the democrats throughout the state, and in January, 1875, Mr Kernan was chosen by the democratic caucus for the position and subsequently elected. Roscoe Conkling was his colleague in the senate for the next six years.

Possessing strong convictions Mr Kernan took high grounds on all the important issues presented to the senate. He was the uncompromising advocate of honest money, and

in the debate on the Bland silver bill he took side with those opposed to its passage. Deprecating passion or prejudice in deciding on the measure, he declared that a 90-cent dollar and the fluctuating silver standard of the currency would stain the public honor of the nation, and while injuring all, would bear with greater weight upon the poor. He stated that he was in favor of gold and silver currency circulating together, but as long as silver was depreciated below gold it would drive the gold dollar from use. In his opinion, the practical effect of the passage of the bill would be to demonetize gold in case the silver did not rise to par. He had no faith, he said, that silver would rise to par with gold as soon as it should be remonetized. He was in favor of making a silver dollar worth more intrinsically.

On the resignation of Judge Thurman, Mr Kernan became a member of the famous electoral commission in the Hayes-Tilden case, but not until after the whole contest had been virtually decided by declaring the vote of South Carolina. When the question came up in the senate, to ratify the report of the electoral commission, Mr Kernan made a forcible speech against such action.

He said the senate should not affirm the decision made by the commission. "The decision is to the effect that there is no power in congress to obtain the truth and smite down fraud. I solemnly protest against it, and I do so from a higher motive than for the success of any man or any political party. I do not want it to go into the world without protest, that a false and fabricated certificate is to be counted, and I am deeply pained that such a principle should have been affirmed by a vote of eight to seven."

In July, 1876, Senator Kernan, at the St Louis convention, in an earnest, dignified and graceful speech nominated Samuel J. Tilden for the presidency and subsequently in the campaign of that year rendered important service.

In the convention of 1884, held at Chicago, Mr Kernan was not a delegate, but he was present and was one of the

most efficient advocates, outside of the convention, for the nomination of Grover Cleveland. In that year he also rendered valuable services to his party on the stump.

In 1888 his age forbade him to take active part in the contest. He addressed meetings in Utica and vicinity only.

In the last state campaign he was not strong enough to make speeches, but he gave an interview telling his reasons why the democratic candidate should be elected.

Mr Kernan was a manager of the New York state lunatic asylum at Utica for several years and resigned when chosen senator. He was elected a school commissioner in 1843 and served for 20 years. He was chosen as the representative of Georgetown college to the Roman catholic congress in Baltimore in 1889.

Mr Kernan won merited distinction at a bar, which, during the active portion of his professional life, was one of the most illustrious in the state. Among his competitors were: Hiram Denio as long as he remained an advocate at the bar who, subsequently wearing the spotless ermine of the upright judge with honor and renown, for 12 years occupied a seat upon the bench of the court of last resort, and whose "decisions are received as law throughout the continent of America and quoted with respect in Westminster hall;" Charles H. Doolittle, whose unremitting devotion to duty, untiring industry and keenly analytic intellect made him not only a successful advocate but an ornament to the bench; Ward Hunt, while an advocate at the bar, on account of the integrity of his character, his sound common sense and his dignified and courteous bearing, at once highly esteemed by his professional brethren and influential with the court, and who, later, as justice of the supreme court of the United States adorned the bench of the, perhaps, most distinguished legal tribunal in the world; Samuel Beardsley, that great lawyer and jurist, whose erect and stalwart form, so emblematical of his character, now rises before me with peculiar pleasure in all its rugged-

ness and dignity ; Roscoe Conkling, the advocate of matchless eloquence and exhaustless fertility of resource, against whom Mr Kernan, both at the bar and in the forum of the nation, as a leader of a great political party, was continually pitted in intellectual contests, which, however great their severity, never ruptured the warm personal friendship which existed between them (it is pleasant to relate that on the occasion of a public reception tendered to Senator Conkling on his return from Europe in 1877, Mr Kernan delivered the welcoming address); William J. Bacon, the upright judge and the scholarly and accomplished man of letters; Joshua A. Spencer, the perhaps unequalled jury advocate, of whom Roscoe Conkling said, "I can not express my indebtedness to him. Whatever success I may have had in life I owe in a great measure to Mr Spencer."

Such was the array of legal talent with which, during his professional life, Mr Kernan was called to cope, and it is the unanimous judgment of the bar, that amid this galaxy of illustrious men, he was always *par inter primos*,—equal among the greatest.

The speaker believes that it was Mr Kernan's highest ambition to excel in his profession, and to attain a thorough understanding and complete mastery of legal science. To this end, with singleness of purpose, he devoted the untiring industry and energy of his life.

As a lawyer Mr Kernan was cultivated, public spirited and conscientious. "The capacity for the display of great intellectual tact, ability and learning, in presenting and advocating the interest of the client, is largely based upon the hours of labor and study out of the court room." No one appreciated or carried out this idea more faithfully than he. He had in a preeminent degree the faculty of work, that patient application which is not only a mark of ability but also the surest pledge of success. He knew that no professional man could attain the rewards and enjoy the highest honors of his calling, except by earnest and patient toil,



profound thought and continual application to his studies and his duties. He had in large degree the power of concentration, and fixing his attention upon a subject he held it with an iron grasp until he had fully solved the problem under consideration.

Mr Kernan had a logical mind with unusual powers of statement and analysis, united with rare gifts of eloquence and persuasion. In marshaling the facts and ideas which were to furnish the solution of his case, and grouping them in orderly and legal relations, he was a consummate master.

In the examination of witnesses he displayed rare knowledge of human nature. Treating them kindly and courteously, he restrained the forward, he gently led the unwilling, encouraged the timid, and so involved the deceitful witness in a web of his own falsehoods that he compelled him to strengthen the very case which he had endeavored to defeat.

His language as well as his bearing toward the jury were such as to create the belief that he was absolutely honest and sincere.

He treated the court with uniform respect and seemed only desirous that it should comprehend his views and receive fitting impression from their statement, and the judges, reciprocating the regard which he showed for them, examined with care the cases which he cited, because they implicitly believed in him, on account of the candor and fairness with which he presented his points.

His kindness and cordiality toward the younger members of the profession were proverbial. Says one of the prominent members of the Oneida bar, "The younger men who came to him for advice and counsel always found him ready and willing to assist them, and those who chanced to be opposed to him in court remember with gratitude the kindly manner with which he treated them."

While a member of the senate Mr Kernan's course was marked by that spirit of liberality, conjoined with wise con-

servatism, which should ever be characteristic of the statesman. His evident determination to exert himself for the welfare of the whole country, as well as of the great state which he represented, as shown by the broadness and justice of his views, secured for him the respect of every section and of men of the most widely divergent political opinions.

Faithful in the discharge of every duty of his position, he was constant in his attendance upon the sessions of the senate, and as a member of the various committees he was thorough and painstaking in all matters referred to them.

His genial nature and urbanity of manner gained the good will of his colleagues, while his integrity, fidelity and eminent abilities secured their confidence and respect, and they willingly accorded to him great influence in their deliberations and actions.

Mr Kernan ranked among the most distinguished members of the senate, and the record that he made is one of which the state, which honored itself by placing him there, may well be proud.

From the beginning to the close of his public life Mr Kernan was a democrat and at an early age became prominent in the councils of that party. A democrat, he was, however, still a patriot, and when secession raised its hydra-head he at once became one of the staunchest supporters of the national government in its efforts to maintain the integrity of the Union.

Mr Kernan was a gentleman, but not the pseudo-gentleman of Chesterfield,—the counterfeit, built from without, inward. His gentlemanly character was built from within, outward. Of him it might be said with Polonius, "The apparel oft proclaims the man." As described in the words of another, "He never appeared to have taken pains with his clothes, but on all occasions, he looked as if it were perfectly natural that he should be dressed like a gentleman." Possessed of pure and elevated sentiments, his manners

were their natural outcome. The heart of man speaks from the tongue. Manners and bearing are always the results of habitual feelings. The man of base thoughts will betray the absence of nobility of soul, no matter what the polished schools in which he may have been educated. The proudest lineage will not insure the descendant of an hundred earls against coarseness and foulness of nature and their infallible outward manifestations.

Replete with humor and anecdote, he was scrupulously considerate of the feelings of others. Bright and cheerful of disposition, he was yet earnest and free from levity. To an unusual sweetness and uniformity of temper, which no disappointment could disturb and no injury could change, he added a rare grace and urbanity of manner, and charming felicity in social intercourse. These delightful amenities of character made him a most agreeable companion in all the circles in which he moved. While he was a good talker he was also a good listener, and had the happy faculty of putting all those with whom he conversed at ease with themselves. The wit and wisdom of his conversation gave added charms to the generous and unaffected hospitality of the home of one who may truly be said to have been a gentleman of the old school. He had an innate love of the candid, the manly and the real, and an instinctive dislike of the affected and the false. Detesting display and pretension he shrunk from notoriety. No respecter of wealth, rank, or station, he gave to the humblest applicant for his attention the same thoughtful consideration which he accorded to men of wealth and position.

Regent Kernan was a Christian. A plain, simple, devout and consistent Roman catholic, he knelt reverently at the altar of his church to receive the sacrament of her faith. He had no intolerance in his nature. Confident as to what he believed, while respecting the piety of all other good Christians, he never sacrificed a jot or tittle of his own.

In all his public relations Mr Kernan was free from the

least touch of sectarian bias. Throughout his public career he retained his fealty to his conscience and performed no act unworthy of his manhood, and at its close, came back to his fellow citizens, as he had gone from among them, with "clean hands and a pure heart" and quietly resumed the practice of his profession.

To great legal learning he added those accomplishments of mind and manner that gave him the same prominence in private life that he attained at the bar, on the rostrum and in the halls of congress.

As a statesman and a lawyer Mr Kernan stood in the front rank of his contemporaries. He was a democrat of the type of Thurman and Bayard of the present, and William L. Marcy and Silas Wright of an earlier generation, and, like his life-long friend Horatio Seymour, the model of a Christian gentleman. The fact that he was so often chosen as the presiding officer of the various conventions and commissions with which he was associated, emphatically proclaimed his ability for leadership.

The bench and the bar have given utterance to the statement that in forensic struggles he was ever an honorable opponent, and that when connected with him in professional relations they could rely upon his advice and assistance as an able, faithful and efficient advocate and friend.

In the rancor of partisan strife his religious views were ruthlessly assailed, but during his whole public life no breath of suspicion was ever cast upon the purity of his motives, the uprightness of his character or the integrity of his action, in the discharge of the high trusts confided to him. Few men have attracted as large a measure of public attention, and maintained for an equal period of time such a measure of professional and political distinction. An earnest partisan he yet retained the confidence and respect of friend and foe.

Few men have been as happy in the evening of their lives. At the last meeting of this board which he attended,

it seemed difficult to realize that he had passed his three score years and ten. Advancing years had shed the warm tints of autumn upon his life, and the frosts of many winters had not chilled his heart.

Estimated by the abilities he possessed, the honors he had achieved and the blamelessness of his life, at the time of his decease he was the first citizen of the community in which he lived.

Is it to be wondered at that from city, town, village and hamlet of this great state, there should have come up the voice of sorrow and regret at his decease?

In his death, New York lost one of her most eminent citizens, and the country one who has rendered it high and distinguished service.

He was one of a company of great and good men, illustrious in their generation, whose talents, character and labors were the strength and glory of the commonwealth in which they lived and are now embalmed among its choicest memories.

The fair, central city of the state in which he resided, has been rich in illustrious men. As I speak their forms arise to my view, their gathered presence seems to move before me again, a noble procession as I have often beheld them in by-gone years. Some of them have been previously mentioned in this address. In this splendid group and conspicuous by their character and talents, as well as by the lofty public positions they adorned, is a trio of men, whom it were difficult to match throughout the length and breadth of this imperial state — Kernan, Seymour and Conkling; all of whom, men of rare gifts and great intellectual attainments, have left deep impress, not only upon the community in which they lived but also upon the state whose highest, proudest commissions they ever bore unsullied by any unworthy act.

In closing this sketch of Regent Kernan may we not appropriately quote the words of Judge Story on another occasion:

“We dwell with pleasure upon the entirety of a life adorned by consistent principles, and filled up in the discharge of virtuous duty, where there is nothing to regret and nothing to conceal; no friendships broken; no confidence betrayed; no timid surrender to popular clamor; no eager reaches for popular favor.”



100

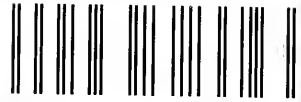








LIBRARY OF CONGRESS



0 013 764 604 3